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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,888	11/27/2001	Mark E. Pennell	10005.000110	7693

31894 7590 04/04/2005

OKAMOTO & BENEDICTO, LLP
P.O. BOX 641330
SAN JOSE, CA 95164

EXAMINER	
BAYERL, RAYMOND J	
ART UNIT	**PAPER NUMBER**
2173	

DATE MAILED: 04/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/993,888	PENNELL ET AL.	
	Examiner	Art Unit	
	Raymond J. Bayerl	2173	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 December 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 - 34* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 - 9, 12, 15 - 18, 21, 24 - 26, 28 - 34* is/are rejected.

7)☒ Claim(s) *10 - 11, 13 - 14, 19 - 20, 22 - 23, 27* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1 – 9, 12, 15 – 18, 21, 24 – 26, 28 – 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landsman et al ("Landsman"; U.S. Patent Number 6,687,737) in view of Cragun et al ("Cragun"; U.S. Patent Number 6,324,553).

Regarding independent claim 1, Landsman shows an internet distributor of advertisements that are downloaded to the client computer by the server computer via the network. The server forces information to the client browser, as additional code that is inserted into the client browser, thus allowing an advertisement to be displayed on the screen. Specifically, an HTML advertising tag is embedded into a web page. Landsman does not discloses a method of defeating an advertisement blocker, such that when the server forces information to the client browser, the browser refuses to accept the data from the server. However, if an advertisement blocker is enabled on a client browser, Landsman is essentially motivated to develop a strategy to overcome the advertisement blocker, so as to further the advertising enterprise and assure that visibility for the interstitial advertisements is restored.

As an example of blocking measures put in place on client systems, Cragun shows the ability for a browser to selectively disable or enable viewable objects on a document. The object appears within the document on the basis of tags that can be selectively disabled in the browser by the user selection. The user decides which tags are blocked and the browser saves the control tags for the objects in a list.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to block an advertisement blocker of the kind outlined by Cragun, so as to allow advertisement to be sent to client browsers without blocking, the objective of Landsman.

Such an arrangement would have been obvious because one of ordinary skill in the art would have been motivated to suggest that an advertisement distributor (Landsman) over a network should have some form of effective countermeasure over an advertisement blocker (as per Cragun) on the client so that the advertisements in a browser could be displayed and the advertising campaign achieve its full intended effect.

In the effort to render Cragun's blocker ineffective, Landsman is motivated towards claim 2's act of disabling the window-blocking mechanism by removing the window-blocking mechanism from the computer. When the mechanism is no longer in use against Landsman's advertisements, it has been removed, and also, "removing a component of the window-blocking mechanism" has been achieved (claim 3). Furthermore, when the disability sought by Landsman is complete, "altering a component" (claim 4) has taken place, along with "closing the window-blocking mechanism" (claim 5), since Cragun's blocker would have this effective disposition, relative to the now-successful Landsman advertisements.

As per independent claims 6, 30, the Landsman user will attempt "launching a new window", but when faced with Cragun's "window blocking mechanism" will have the motivation towards the obvious end of "preventing the window from being blocked".

As per claims 7, 31 both the Landsman and Cragun systems are directed towards a "browser"-based environment that "is coupled to the Internet".
As per claim 8, any Landsman window, when first presented, has "a non-functional feature on the window", in that certain portions of the window simply do not have function, and/or are not "functional" until they are used, when "functional" is given a reasonably broad interpretation. Such features are also an "attribute" (claim 9) and a "field" in the display data structure that is occupied (claim 12). The overall window as per Landsman, with user interaction, is "a dialog box" (claim 32), which seeks to evade a "computer program" that "blocks pop-ups" (claim 33).

As per claim 15's "repeatedly manipulating a characteristic of the window" so as to achieve "preventing the window from being blocked", this is what Landsman does, when the advertisement is repeatedly tried upon the browser set-up, so as to achieve display. This would continue, when Cragun's blocking arrangement has been defeated. Such re-assertion of the window's trial is "repeatedly turning ON a visibility attribute of the window" (claim 16), since the Landsman window is a visible one. In attempting to develop the desired advertisement display, Landsman is also "repeatedly positioning the window in a screen location viewable by a user" (claim 17).

Part of Landsman's use of the interstitial period within user navigation "includes delaying the launching of the window" (claim 18) until a time where it might obtain greater attention (see col 26, lines 25 – 65).

A principal feature of the blocking that occurs in Cragun is a reliance upon URL values that are associated with the undesired content that might appear in a document

(col 10, lines 38 – 48). Thus, the "status bar" of an ongoing "browser" process (claim 21) will be subject to "momentarily changing" in the event that Landsman seeks a way around this countermeasure in Cragun: under a different URL, the window evades the blocking list 310 (col 12, lines 14 – 26) and thus regains control of the browser at that address. This change to advertisement-visibility also includes "setting the title bar" of the browser window that contains it (claim 24).

The advertisement stream, in the third-party server arrangement of Landsman, includes "using a single web server computer having a rotating list of messages" (claim 25), and can readily be sourced "from a secure domain" (claim 26).

The object-blocking "API" of a "browser" in Cragun (claim 28) will be so affected that it does not remove the Landsman "window"; thus, "an attribute" thereof has been set (claim 29).

The "method for preventing a message from being blocked" in independent claim 34 follows from the efforts Landsman is required to take, so as to avoid Cragun's "window-blocking computer program"—an identical teaching of Landsman's interstitial effect is that the "message" appear "in a main browser window for a period of time in-between navigations".

3. Applicant's arguments filed 22 December 2004 have been fully considered but they are not persuasive, as regard the claims that continue to be rejected above under 35 USC 103.

Applicant begins by refuting the central conclusion that motivation rests in Cragun for the Landsman advertiser to provide for the defeat of a window-blocking

mechanism by arguing (page 7) that "Conventional advertising providers on the Internet do not defeat window-blocking mechanisms, nor have the means to do so." However, such an adaptation of Landsman follows from the fact that window-blocking mechanisms like Cragun's exist at all; a Landsman developer would want his or her message to get through. Thus, while a Cragun "browser does not automatically disable itself in response to detecting itself", it would have been obvious for Landsman to do so.

Applicant argues at page 8 against the combinability of Landsman and Cragun by stating that "it is not clear how Cragun's object blocker, which is running in a client computer, can be reconfigured or disabled by an advertising provider, which is remotely delivering advertising". However, by those same faculties by which the Landsman developer is able to gain control over a computer and put forth interstitial advertising, sufficient control over a Cragun computer should be possible to counteract the window blocker and read upon the claim. This ability that was known in the art as seen in Landsman answers applicant's complaints concerning the rejections of claims 2 ('removal"), 3 ("removing a component"), 4 ("altering a component") and 5 ("closing"), since each of these is in fact accomplished when the Landsman advertising presence is successful in performing such modification of a Cragun environment as to circumvent the blocking.

Concerning claim 7's "preventing the window from being blocked", applicant argues (pages 9 – 10) that "A user configuring Cragun's blocking list may only prevent blocking of objects in a window, not the window itself while the computer is coupled to the internet". However, the objects that are in fact blocked in Cragun bear strong

analogy to windows, and should Landsman attempt to introduce windows that embody these objects, they would be subject to blocking and thus establish a matter of concern for Landsman.

As per claim 8's "incorporating a non-functional feature on the window", applicant argues (page 10) that "the non-functional feature is incorporated on the window that is being prevented from being blocked". However, even with this taken into account, it remains that a Landsman window will have non-functional portions, or in the alternative, portions that remain non-functional during the time they are being introduced to the screen, and thus the rejection as noted above. The "attribute" and "field" of respective claims 9, 12 qualify as standard features of such a Landsman window.

As per claim 15's "repeatedly manipulating a characteristic of the window", applicant argues (page 11) that "Cragun...does not disclose any repeated (i.e., more than once) manipulation of a characteristic of a window to prevent that window from being blocked". However, this is the Examiner's reason for relying upon Landsman, where repeated assertions of windows are seen, in attempting to obtain display during interstitial periods, this resulting in an "visibility attribute" being asserted and "positioning the window in a screen location" (claims 16, 17).

As per claim 18, applicant argues (page 11) that "Cragun...does not discuss delaying the launching of a window, such as Landsman's, to prevent that window from being blocked". However, and as set forth above, applicant should note that Landsman identically teaches a delay until the period of page navigation, so as to increase the

likelihood of success in placing the advertising window, a technique that would extend into the fully window-block-defeated situation when Cragun's blocker is accounted for.

Concerning claim 21, applicant argues (page 12) that "Neither Landsman nor Cragun discloses or suggests momentarily changing the status bar of a browser to reflect as URL of the window that is being prevented from being blocked". However, there occurs at least a momentary switching of the address when a Landsman advertiser attempts to circumvent the Cragun URL control, and thus the claim is met. This also sets the "title bar", as in claim 24.

As per claim 26, applicant argues (page 12) that "Landsman...talks about LANs but is completely silent on serving the window from a secure domain to prevent it from being blocked". However, and as also noted above, the "secure domain" is something available to any commercial developer of sufficient means, and thus, to the Landsman advertiser.

Regarding claim 28, applicant argues (page 13) that "Cragun in col. 10, lines 27-40, cited in the last office action, discusses entering the URLs of objects, not windows, to be blocked. Furthermore, there is nothing in that section of Cragun that talks about making the window non-responsive to an API to prevent it from being blocked". However, it is the objective of Landsman to overcome those limitations placed upon the advertising window by the browser API as found in Cragun, and a window is analogous to an object as a portion of an overall browsing session.

Concerning claim 34, applicant argues (page 14) that "Neither Landsman nor Cragun discloses or suggests displaying a message in a main browser window for a

period of time in-between navigations to prevent the message from being blocked". However, and as is seen in Landsman, the use of this interval to increase the likelihood of advertising success was known in the art, and it would have occurred to the Landsman user to use it to maximal advantage in combating Cragun's blocking arrangement.

4. Claims 10 – 11, 13 – 14, 19 – 20, 22 – 23, 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

While a "window" containing certain objects lacking immediate function is suggested in general in the Landsman advertisement display, a "menu bar" (claim 10) "tool bar" (claim 11), "login field" (claim 13) or "password field" (claim 14) for the purpose of "preventing the window from being blocked" are not fairly suggested by the mere interposition of such dialogues.

As per claim 19's use of "part of a domain name in a URL of the window, wherein the window is not served from a server computer corresponding to the domain name", it may be true that Cragun screens for windows on the basis of URL *per se*, and would thus invite Landsman to exploit this feature to get an advertisement past. However, the URLs used in Cragun would not teach or suggest URLs from a different server than the one providing the "window" that Landsman seeks to insert.

Claim 20's "intercepting an event to close the window", while it might be seen as part of the navigational initiation in Landsman, does not result in "hiding the window from a user's view", since there is nothing remaining to be hidden after such an input is

received—the identically-disclosed interception as per Landsman is merely to know when the interstitial period is beginning, and thus, when is a good time to introduce the advertisement.

While it would have been obvious to the person of ordinary skill to introduce assorted variants upon a Landsman window to attempt to counteract the Cragun blocker, these variants do not extend to teaching or suggesting "inputting keystroke combinations" (claim 22) or "triggering mouse events" (claim 23).

As per claim 27's "altering a list of the window-blocking mechanism", while an effective Landsman approach in facing the "list" contained in the Cragun blocker might well evade the contents of that list, such prior art of record does not teach or suggest that the "list" itself is actually altered.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

In updating the search, the Examiner noted that Melchner (US #2002/0,154,163 A1) teaches an inserted window region in a browser display, intended for advertising.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond J. Bayerl whose telephone number is (571) 272-4045. The examiner can normally be reached on M - Th from 9:00 AM to 4:00 PM ET.

8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca, can be reached on (571) 272-4048. All patent application related correspondence transmitted by FAX **must be directed** to the central FAX number (703) 872-9306.

9. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.

RAYMOND J. BAYERL
PRIMARY EXAMINER
ART UNIT 2173
29 March 2005